

July 23, 1993

Mary T. Isaacs
Vice President and Controller
Trane Federal Credit Union
2715 Losey Blvd. S.
Box 443
La Crosse, WI 54602-0443

Re: Hotel Tax (Your Letter of June 29, 1993)

Dear Ms. Isaacs:

You requested an opinion regarding a problem that you experienced in obtaining an exemption from state and local hotel occupancy taxes. Section 122 of the Federal Credit Union Act, 12 U.S.C. ~1768, expressly exempts federal credit unions ("FCUs") from all federal and state taxation, except for non-discriminatory taxes on real property and tangible personal property. Where states have attempted to levy sales or excise taxes on federal instrumentalities such as FCUs, courts have held that such taxes may be imposed only when the legal incidence of the tax falls on the retailer, rather than on the federal instrumentality purchasing the goods or services. *James v. Dravo Contracting Co.*, 302 U.S. 134 (1937). Where the retailer is merely a collector of the tax, and the tax is intended to be passed along to the purchaser, the legal incidence of the tax is on the purchaser, and the tax is prohibited as to federal instrumentalities, including FCUs. Therefore, the availability of an exemption from state and local taxes depends upon the specific statutes or ordinances involved. You did not provide copies of the specific statute or ordinance in question with your letter, nor have we any ready, inexpensive means of obtaining such laws. In addition, the Office of General Counsel has a small staff that would have little time to perform other legal work if we contested every state and local taxing authority regarding exemptions for FCUs. We trust that you understand our situation. Therefore, we recommend that you consult with either your own legal counsel; the entity organizing the convention, seminar or meeting involved; the state league of credit unions; or the state and local taxing authority directly concerning an exemption from state and local taxes, such as the hotel occupancy tax you describe.

Sincerely,

James J. Engel
Deputy General Counsel

GC/MEC:sg
SSIC 3000
93-0708